## IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA CENTRAL DIVISION

ANNIE OAKLEY ENTERPRISES, INC.,	*	CIVIL NO. 4-98-CV-20120
	*	21/12//00// 90/07/20120
Plaintiff,	*	
· ·	*	
V.	*	
	*	
CONTINENTAL MANUFACTURING	*	MEMORANDUM OPINION,
CHEMIST, INC. d/b/a/ CONTINENTAL	*	RULING, AND ORDER
LABORATORIES,	*	DENYING INTERVENOR'S
	*	MOTION TO QUASH
Defendant.	*	GARNISHMENT
	*	
GERALD A. MILLER,	*	
	*	
Intervenor.	*	

Gerald A. Miller ("Miller") moves to intervene, pursuant to Federal Rule of Civil Procedure 24(a), and quash the notice of garnishment served on defendant Continental Manufacturing Chemist, Inc. ("Continental") on behalf of plaintiff Annie Oakley Enterprises, Inc. ("Annie Oakley"). (Clerk's No. 83.) Annie Oakley does not object to Miller's intervention, so the sole issue to decide is the motion to quash the garnishment.

## I. FACTS

The following facts are not in dispute. When Continental was incorporated in Iowa on June 1, 1994, Miller was one of the two directors. On Continental's August 18, 1997, annual report, Miller was listed as the president, secretary, treasurer, and sole director. In Continental's December 31, 1998, financial statement, Miller was listed as owning 85% of Continental's outstanding shares.

On December 30, 1993, Miller loaned Continental \$875,889.00, evidenced by a promissory note and security agreement executed on the same date. From the fall of 1994 through 1995,

transactions occurred between Annie Oakley and Continental that precipitated litigation between them. On March 16, 1998, Annie Oakley filed a complaint against Continental, who filed an answer on April 13, 1998. On May 5, 1998, Miller filed a financial statement with the Iowa Secretary of State, attempting to perfect his December 1993 security agreement with Continental. On December 30, 1998, Miller loaned Continental a total of \$3,248,517.64, evidenced by three separate promissory notes executed on the same date. On October 6, 1999, Annie Oakley obtained a judgment against Continental for \$67, 334.00 in consequential damages for breach of contract. On November 24, 1999, this court ordered prejudgment and postjudgment interest to Annie Oakley, and on January 5, 2000, awarded it \$4,282.30 in costs. On December 12, 1999, Continental and City State Bank were served, on behalf of Annie Oakley, with a writ of execution and a notice of garnishment respectively. By agreement of the parties, City State Bank has paid the sum of \$13,760.12 to the Clerk of Court in satisfaction of the garnishment; this sum represents the total of two checking accounts belonging to Continental.

## II. DISCUSSION

Assuming, without deciding, that Miller has priority over the disputed assets, Miller's motion still fails. Iowa has adopted Article 9 of the Uniform Commercial Code ("UCC"). Iowa Code §§ 554.9101-554.9507 (1999). Sections 554.9501-554.9507 provide remedies to a secured creditor if a debtor defaults. The remedies, however, are expressly conditioned upon default of the debtor. *Id.* § 554.9501(1) ("When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this Part....") (emphasis added). There is no contention that Continental is in default regarding any loan extended to it by Miller. *See Frierson v. United Farm Agency, Inc.*, 672 F. Supp. 1272, 1275 (W.D. Mo. 1987) ("Without a default on the debt underlying the security interest, a secured creditor has no right to seize the collateral and apply it against the loan or otherwise prevent another creditor of the debtor from taking possession of the collateral."), *rev'd on other grounds*, 868 F.2d 302 (8th Cir. 1989). Though the *Frierson* court was applying the UCC under Missouri law, the relevant provisions are consistent with the same under Iowa law.

Even assuming that Continental was in default regarding the loans extended to it by Miller, there is no evidence that Miller has exercised his rights upon default. Miller cannot "refuse to exercise its

rights under the security agreement, thereby maintaining [Continental] as a going concern, while it impairs the status of other creditors by preventing them from exercising valid liens. Allowing [Miller] to do so would fly in the face of all Article 9, which is premised on the debtor's ability to exercise rights in the property. *See* [Iowa Code § 554.9311]." *Frierson v. United Farm Agency, Inc.*, 868 F.2d 302, 305 (8th Cir. 1989); *see Martens v. Hadley Mem'l Hosp.*, 729 F. Supp. 1391, 1395 (D.D.C. 1990) (following *Frierson*); *Frierson*, 672 F. Supp. at 1276 ("If a secured creditor with a security interest over all the debtor's property is permitted to rely on a default, whether technical or not, to prevent another creditor from executing on the debtor's property, while treating the loan as not in default, when dealing with the debtor, severe inequities would result. Moreover, other creditors would be reluctant to extend credit to a debtor who has previously granted a security interest over all his property. Such an approach would be against both the spirit and letter of the Uniform Commercial Code.").

## III. RULING

Intervenor Gerald A. Miller's motion to intervene is **GRANTED**, and his motion to quash garnishment is **DENIED**. The funds deposited with the Clerk of Court by City State Bank shall be released to Plaintiff, subject to any costs or charges the Clerk is required to withhold.

Dated this 16th day of February, 2000.

CELESTE F. BREMER

U.S. MAGISTRATE JUDGE